

No. 84-786

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IN THE SUPREME COURT OF THE UNITED STATES

ALEXANDER J. STEVAS,  
CLERK

OCTOBER TERM, 1984

STATE OF MAINE,  
Petitioner

V.

PERLEY MOULTON, JR.,  
Respondent

ON WRIT OF CERTIORARI TO THE  
SUPREME JUDICIAL COURT OF THE  
STATE OF MAINE

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 13, 1984  
CERTIORARI GRANTED FEBRUARY 19, 1985

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RELEVANT DOCKET ENTRIES

STATE OF MAINE V. PERLEY MOULTON, JR.

MAINE SUPERIOR COURT  
DOCKET NO. CR-81-38

4/7/81-Grand Jury return indictment into Court charging the Defendant with three counts of theft by receiving, date of indictment, April 7, 1981.

4/9/81-Deft. present in Court with Counsel, Anthony Beardsley, Esq. William Anderson present for State. Deft. acknowledges receipt of copy of Indictment and is arraigned by the Court. Reading waived. Plea: Not Guilty.

6/7/83-Dismissal under Rule 48(a) filed by Asst. D.A. for the following reason, to wit: Due to Re-Indictment in these matters.

6/7/83-Dismissal entered.

MAINE SUPERIOR COURT  
DOCKET NO. CR-81-39

4/7/81-Grand Jury return indictment into Court charging the Defendant with theft by receiving. Date of Indictment, April 7, 1981.

4/9/81-Deft. present in Court with Counsel, Anthony Beardsley, Esq. William Anderson present for State. Deft. acknowledges receipt of copy of Indictment and is arraigned by the Court. Reading waived. Plea: Not Guilty.

10/21/82-Motion to Sever dtd. Oct. 20, 1982, filed by Deft.

11/5/82-Anthony Beardsley for Deft. and William Anderson for State. Hearing had on Motion to Sever CR-81-39 from the case of State of Maine vs. Gary Colson, docket no. CR-81-37. After hearing, Motion Denied. (Alexander, J.)

6/7/83-Dismissal under Rule 48(a) filed by Asst. D.A. for the following reason, to wit: Due to Re-Indictment in these matters.

6/7/83-Dismissal entered.

MAINE SUPERIOR COURT  
DOCKET NO. CR-83-13

1/21/83-Grand Jury return indictment into court charging the defendant with burglary, class C and theft, Class C.

3/1/83-Deft. present in Hancock County Superior Court with Counsel for arraignment. Deft. acknowledges

receipt of copy of Indictment and is arraigned by the Court. Reading waived. Plea: NOT GUILTY.

4/13/83-Motion to Suppress dtd. March 28, 1983, filed.

6/1/83-Defts. Perley Moulton and Donald Marcia present in Court with their respective counsel, Anthony Beardsley for Moulton and William Ferm for Marcia, for hearing on motions. William Anderson for State. Testimonial hearing had on Motion to Suppress of Perley Moulton. After hearing, matter taken under advisement.

6/20/83-Opinion and Order dtd. June 14, 1983, received, filed and entered. (McCarthy, J. -- Since the State did not deliberately elicit any statements contained in the recordings that relate to the crimes for which the deft. had already been indicted, and since the State did not create a situation likely to induce the deft. to make incriminating statements without the assistance of counsel, this Court finds no reason to suppress the recording and denies the deft's motion.

9/6/83-After recess, Deft. files waiver of jury trial. Court makes inquiry of deft. and after inquiry, waiver approved by the Court. Cases CR-83-13, 15 and 16



consolidated for trial before the Court.

9/8/83-After argument by counsel and a recess Court finds defendant guilty as charged and he convicted in CR-83-13 of Count I, Burglary and Count II, Theft, both class C; In CR-83-16 defendant found guilty of Count II, Theft, Class B. Deft. found Not Guilty of Arson, Class A, Count I of CR-83-16 and is discharged as to Count I.

9/26/83-Deft. present in Court with counsel, Anthony Beardsley, Esq. William Anderson for State. Deft. having been found guilty by jury of Burglary and Theft in CR-83-13 and of Theft in CR-83-16 is adjudged guilty as charged and convicted and is placed at the bar for sentence in these matters and in other cases. Pre-Sentence report reviewed by Court, counsel and deft. Sentence: In CR-83-10, 11, and both counts of CR-83-13, deft. committed to Maine State Prison for one year. In CR-83-16, Ct. II, deft. committed to Maine State Prison for four years, all suspended, and placed on probation for two years, with special condition.

MAINE SUPERIOR COURT  
DOCKET NO. CR-83-16

1/21/82-Grand Jury return indictment into Court charging the defendant with arson, class A and Theft, Class B.

3/1/83-Deft. present in Hancock County Superior Court with Counsel for arraignment. Deft. acknowledges receipt of copy of Indictment and is arraigned by the Court. Reading waived. Plea: NOT GUILTY.

4/13/83-Motion to Suppress dtd. March 28, 1983, filed.

6/1/83-Defts. Perley Moulton and Donald Marcia present in Court with their respective counsel, Anthony Beardsley for Moulton and William Ferm for Marcia, for hearing on motions. William Anderson for State. Testimonial hearing had on Motion to Suppress of Perley Moulton. After hearing, matter taken under advisement.

6/20/83-Opinion and Order dtd. June 14, 1983, received, filed and entered. (McCarthy, J.--Since the State did not deliberately elicit any statements contained in the recordings that relate to the crimes for which the deft. had already been indicted, and since the State did not create a situation likely to induce the

deft. to make incriminating statements without the assistance of counsel, this Court finds no reason to suppress the recording and denies the deft's motion.

9/6/83-After recess, Deft. files waiver of jury trial. Court makes inquiry of deft. and after inquiry, waiver approved by the Court. Cases CR-83-13, 15 and 16 consolidated for trial before the Court.

9/8/83-After argument by counsel and a recess Court finds defendant guilty as charged and he convicted in CR-83-13 of Count I, Burglary and Count II Theft, both class C. In CR-83-16 defendant found guilty of Count II, Theft, Class B. Deft. found Not Guilty of Arson, Class A, Count I of CR-83-16 and is discharged as to Count I.

9/26/83-Deft. present in Court with counsel, Anthony Beardsley, Esq. William Anderson for State. Deft. having been found guilty by jury of Burglary and Theft in CR-83-13 and of Theft in CR-83-16 is adjudged guilty as charged and convicted and is placed at the bar for sentence in these matters and in other cases. Pre-Sentence report reviewed by Court, counsel and deft. Sentence: In CR-83-10, 11, and both counts of CR-83-13, deft. committed to Maine State

Prison for one year. In CR-83-16, Ct. II, deft. committed to Maine State Prison for four years, all suspended, and placed on probation for two years, with special condition.

INDICTMENTS

MAINE SUPERIOR COURT  
DOCKET NO. CR-81-38

STATE OF MAINE  
V.  
PERLEY MOULTON, JR.

INDICTMENT FOR VIOLATION OF  
17-A M.R.S.A. §§ 359 & 802  
Theft by Receiving (Class C) (Counts I & III)  
Theft by Receiving (Class B) (Count II)

THE GRAND JURY CHARGES:

COUNT I

That on or about the 16th day of January, 1981, in the City of Belfast, County of Waldo and the State of Maine, Perley Moulton Jr. did receive, retain, or dispose of the property of another, to wit one 1978 Ford Pick-up truck having a value in excess of One Thousand Dollars (\$1,000), the property of William Meucci, knowing that it had been stolen or believing that it had probably been stolen, with the

intention to deprive the said William Meucci thereof.

COUNT II

That on or about the 16th day of January, 1981, in the City of Belfast, County of Waldo and the State of Maine, Perley Moulton Jr. did receive, retain, or dispose of the property of another, to wit one 1978 Chevrolet Dump Truck having a value in excess of Five Thousand Dollars (\$5,000), the property of Richard Fairbrother, knowing that it had been stolen or believing that it had probably been stolen, with the intention to deprive the said Richard Fairbrother thereof.

COUNT III

That on or about the 16th day of January, 1981, in the City of Belfast, County of Waldo and the State of Maine, Perley Moulton Jr. did receive, retain, or

dispose of the property of another, to wit assorted Ford Motor Company automotive parts having a value in excess of One Thousand Dollars (\$1,000), the property of Lothrop Ford, Inc., knowing that it had been stolen or believing that it had probably been stolen, with the intention to deprive the said Lothrop Ford, Inc., thereof.

Date: 7 April 1981      A True Bill

s/Grand Jury Foreman  
Foreman

MAINE SUPERIOR COURT  
DOCKET NO. CR-81-39

STATE OF MAINE  
V.  
PERLEY MOULTON, JR.

INDICTMENT FOR VIOLATION OF  
17-A M.R.S.A. § 359  
Theft by Receiving (Class D)

THE GRAND JURY CHARGES:

That on or about the 23rd day of January, 1981, in the City of Belfast, County of Waldo and the State of Maine, Perley Moulton Jr. did receive, retain, or dispose of the property of another, to wit one 1970 Mustang automobile the property of Donald Martin, knowing that it had been stolen or believing that it had probably been stolen, with the intention to deprive the said Donald Martin thereof.



A True Bill

Date: 7 April 1981      s/Grand Jury Foreman  
Foreman

MAINE SUPERIOR COURT  
DOCKET NO. CR-83-13

STATE OF MAINE  
V.  
PERLEY MOULTON, JR.

INDICTMENT FOR VIOLATION OF  
17-A M.R.S.A. §§ 401 & 353  
Burglary (Class C) (Count I)  
Theft (Class C) (Count II)

THE GRAND JURY CHARGES:

COUNT I

That on or about the 3rd day of  
December, 1980, in the City of Belfast,  
County of Waldo and State of Maine, Perley  
Moulton, Jr. did enter or surreptitiously  
remain in a structure, to wit the place of  
business of Lothrop Ford Incorporated, the  
property of Lothrop Ford Incorporated,

knowing that he was not licensed or  
privileged to do so, with the intent to  
commit the crime of theft therein.

COUNT II

On or about the 3rd day of December,  
1980, in the City of Belfast, County of  
Waldo and State of Maine, Perley Moulton,  
Jr. did obtain or exercise unauthorized  
control over the property of another, to  
wit; assorted Ford Motor Company automotive  
parts and one Ford pickup truck having an  
aggregate value in excess of \$1,000.00 the  
property of Lothrop Ford Incorporated, with  
the intent to deprive the owner thereof.

A True Bill

Date: 21 January 1983      s/Stephen J. Hall  
Foreman



MAINE SUPERIOR COURT  
DOCKET NO. CR-83-16

STATE OF MAINE  
V.  
PERLEY MOULTON, JR.

INDICTMENT FOR VIOLATION OF  
17-A M.R.S.A. §§ 802 & 353  
Arson (Class A) (Count I)  
Theft (Class B) (Count II)

THE GRAND JURY CHARGES:

COUNT I

That on or about the 15th day of  
January, 1981, in the City of Belfast,  
County of Waldo and State of Maine, Perley  
Moulton, Jr. did start, cause or maintain a  
fire or explosion on the property of  
another, to wit; one 1978 Chevrolet Dump  
Truck the property of Richard Fairbrother,  
with the intent to damage or destroy  
property thereon.

COUNT II

That on or about the 14th day of  
January, 1981, in the City of Belfast,  
County of Waldo and State of Maine, Perley  
Moulton, Jr. did obtain or exercise  
unauthorized control over the property of  
another, to wit one 1978 Chevrolet Dump  
Truck, having a value in excess of  
\$5,000.00 the property of Richard  
Fairbrother, with the intent to deprive the  
said Richard Fairbrother thereof.

A True Bill

Date: 21 January 1983 s/Stephen J. Hall  
Foreman

MOTION TO SUPPRESS

STATE OF MAINE                      MAINE SUPERIOR COURT  
V.                                      DOCKET NO. CR-83-13,16  
PERLEY MOULTON, JR.

NOW COMES the defendant, Perley Moulton, Jr., by and through his attorney, Anthony W. Beardsley, of the law firm of Silsby & Silsby, Ellsworth, Maine, and moves to suppress:

1. Any and all statements made by the defendant, Perley Moulton, Jr., obtained directly or indirectly by law enforcement officials or their agents, including statements made to Gary Coleson, regarding the above captioned matter due to the fact that the defendant was not given proper miranda warnings prior to obtaining these statements.

2. Any and all physical evidence seized by law enforcement agents from the

buildings located on the Belfast Dodge lot, Route 137, Belfast, Maine, on or about January 16, 1981. This suppression is sought because of an illegal search and seizure by police officers who conducted both an illegal warrantless search and an illegal search with a search warrant.

3. Any and all statements made by the defendant, Perley Moulton, Jr., obtained directly or indirectly by law enforcement officials or their agents including Gary Coleson, regarding the above captioned matter due to the fact that the defendant's attorney had not been contacted prior to interviews with the Defendant by police agents including Gary Coleson when they knew that defendant had a lawyer and that the defendant had previously indicated that he did not want to make statements without a lawyer present.

4. Any and all statements made by the defendant and any and all physical evidence not mentioned in the above motions which were obtained directly or indirectly by police agents as a result of obtaining information from the defendant illegally and as a result of evidence received in the improper search of the buildings located on the above mentioned Belfast Dodge lot.

These motions are made on the grounds that the defendant was deprived of his rights under the fourth, fifth, sixth and fourteenth amendments to the Constitution of the United States of America, and article 1, sections 5 and 6 of the Constitution of the State of Maine.

The defendant, Perley Moulton, Jr., contends that the search was not a consent search at the Belfast Dodge garage, that there were no search warrants justifying

the actions of the officers, that the searches were otherwise unlawful in accordance with the law, and that statements made by the defendant, Perley Moulton, Jr., were without the benefit of his lawyer being present and without the benefit of miranda warnings being read to him.

DATED: March 28, 1983

s/Anthony W. Beardsley  
Anthony W. Beardsley, Esquire  
Silsby & Silsby  
Silsby Building  
Ellsworth, Maine 04605  
Attorney for Defendant

(Certificate of Service omitted in printing)

REPORTER'S TRANSCRIPT OF  
HEARING ON MOTION TO SUPPRESS

STATE OF MAINE                      MAINE SUPERIOR COURT  
V.                                      DOCKET NO. CR-83-13,16  
PERLEY MOULTON, JR.

June 1, 1983  
The Honorable William E. McCarthy,  
Presiding Justice

Appearances: William Anderson for State  
Anthony W. Beardsley for  
Defendant

[12]

\* \* \*

THE COURT: Okay.

MR. BEARDSLEY: There's a third issue,  
and this relates to Perley Moulton, Jr. It  
relates to the prosecution wiring the  
co-defendant, and this is after I had made  
motions to sever on their cases -- the  
co-defendant cooperated with the police,  
got together with them and helped to  
commence interrogation of my client ---  
well, they got together, and they wired a

conversation with my client, and I'm trying  
to suppress that conversation, and my main  
reason is that they knew he had counsel, he  
had already been indicted, and what they  
were trying to do is to have him try and  
get my client to make admissions.

\* \* \*

[19]

\* \* \*

MR. BEARDSLEY: Just in brief, Your  
Honor. This suppression has to do with the  
State --- after the first indictment and  
prior to the second indictment, which is a  
2, 2 1/2 year period, the State and the  
co-defendant got together and the  
co-defendant was hired by the police and  
had a rendezvous with my defendant. There  
were also telephone taps made of the  
co-defendant's telephone, and there were at



least three different conversations that were wired. This is after the State had full knowledge that the defendant was represented by me, and he had been represented by me for two years. There had been a motion to sever while the State and the co-defendant were working together, and I believe that the State vehemently sought to have the cases still together, and at the same time were using that co-defendant against my

[19-A]

defendant in eliciting statements and taking --- making an interrogation which I feel deprived my defendant's right to counsel pursuant to the Sixth Amendment and the Maine Constitution.

THE COURT: That seems like a pretty narrow factual situation. Could you just practically stipulate---

MR. ANDERSON: I'm prepared to proceed on the suppression of any statements made.

\* \* \*

MR. ANDERSON: Gary Colson?

(The witness comes forward, takes the stand, and is duly sworn by the Clerk, J. Page)

[20]

GARY COLSON, called by the State, having been duly sworn, testified as follows:

--DIRECT EXAMINATION--

BY MR. ANDERSON:

Q Your name is Gary Colson; is that correct?

A Yes.

Q And you were charged with a series of crimes resulting from sort of a search and seizure incident back in, I believe it was January 16th of 1981?

A Yes.



Q You and Perley Moulton?

A Yes.

Q And as a result of that search and seizure and other evidence, you were charged with certain crimes flowing from that?

A Yes.

Q You were charged with the theft by receiving, I think at the time, of a four wheel drive pick-up?

A Yes.

Q And the theft of a dump truck?

A Yes.

Q The theft of some auto parts?

A Yes.

Q And you were also charged with, I believe, theft of a Mustang?

[21]

A Yes.

Q And Perley Moulton was charged along with you?

A Yes.

Q So, you were both co-defendants in exactly the same cases?

A Yes.

Q Now, at some point, having been charged with those crimes, did you ever go to talk to Bob Keating, Chief of Police in Belfast?

A Yes.

Q And do you remember when you did that?

A I believe it was November 4th.

Q Of what year?

A 1981.

Q Was it '81 or '82?

A '82.

Q So, quite a lot of time had transpired?

A Yes.

Q So, in November of last year you went to see Chief Keating?

A Yes.

Q How did you contact Mr. Keating?

A By phone, and we set up a meeting.

Q By phone you set up a meeting?

A Yes.

Q And where did you meet?

[22]

A Stockton Springs.

Q What was the purpose of your meeting with Mr. Keating in Stockton Springs?

A Well, I had been receiving threatening phone calls, and I just figured that that was enough, it had gone too far.

Q You met in Stockton?

A Yes.

Q And did you discuss much of anything with Mr. Keating in Stockton Springs on that day?

A No, I didn't.

Q What actually took place?

A He told me that I'd, you know, have to get my attorney to talk to him, that he just would not talk, you know, about the case, any of the crimes.

Q Okay. So, did you tell him anything about the offenses that you had been charged with at that time?

A No.

Q Did you tell him anything about what Perley Moulton had done that caused him to be charged with crimes at that time?

A No.

Q You did tell him that you were worried about the threats that were being made to you on the telephone?

A Yes.

Q And he advised you to talk with your lawyer?

[23]

A Yes.

Q And that was on November 4th. Was that a Thursday, to your recollection, or not?

A I'm not sure what day it was.

Q When did you meet with Chief Keating again?

A The 9th.

Q The 9th ---

A Of November.

Q Okay. A few days later?

A Yes.

Q And where did you meet with him?

A Phil Ingerni's office in Bangor, Maine.

Q And who is he?

A He's my attorney.

Q And did you have another meeting with Chief Keating?

A Yes, the 10th.

Q Where was that?

A That was in Orono at the Maine State Police barracks.

Q And is it true that in those two meetings the 9th and the 10th, you engaged in a protracted discussion or a questioning by Officer Keating and Rex Kelley of the Maine State Police concerning these criminal activities that you had been charged with?

A Yes.

Q And perhaps other criminal activities that you might have known about?

[24]

A Yes.

Q Now, in the interim between November 4th and November 9th and 10th, had you seen Perley Moulton?

A Yes.

Q And when did you see him?

A On the 6th.

Q Excuse me?

A On the 6th.

Q And where had you seen Perley Moulton?

A I met him at Don Marcia's house.

Q You met him at Don Marcia's house?

A Yes.

Q Where were you living at the time?

A In Northport.

Q And where was Mr. Moulton residing at the time?

A In New Hampshire.

Q And you met him at Don Marcia's residence. Was that in this area?

A In Belfast.

Q And what did you do after you saw him at Don Marcia's residence?

A We went to Rollie's in Belfast and then over to Jed's.

Q And did you discuss anything with Perley Moulton at Jed's?

A Yes.

Q And what was the nature of the discussions?

[25]

A Getting rid of a couple of the witnesses.

Q Who were these witnesses?

A Gary Elwell.

Q Was there anyone else besides Gary Elwell at this time?

A Basically Gary Elwell.

Q Was there any plan formulated?

A Well, sort of. I was going to Augusta down to the turnpike and pick up a car down there and then come back and take care of them.

Q Who was to give you the car down there?

A Perley.

Q Whose idea was this?

A Perley's.

Q And he told you this at Jed's?

A Yes.

Q And you had this discussion with Mr. Moulton at Jed's, and then it was just a couple of days later you were in Mr. Ingerni's office and you were talking with the police?

A Yes.

Q Did you tell them about this sort of threat?

A Yes.

Q You told who?

A Bob Keating and Detective Kelley.

Q You described this plan to them, did you not?

A Yes.

[26]

Q Now, when you left Perley at Jed's or at the end of that night, was there any plan to meet again?

A He was going to call me.

Q He was going to call you?

A Yes.

Q Now, did he ever call you again after that meeting at Jed's?

A Yes.

Q He did. All right. And was that on November 22nd?

A It was the 21st.



Q November 21st?

A Yes.

Q How many times did he call you during this period?

A Well, I received three phone calls.

Q Now, was there anything placed on your phone to record these phone calls?

A Yes.

Q And who placed that device?

A Chief Keating and Detective Kelley.

Q And did they ask you whether you would allow it or not?

A Yes, they did.

Q And what did you tell them?

A I told them yes.

Q So, there was a listening device placed on your telephone?

A Yes.

[27]

Q Now, when this listening device was placed on your telephone, did you receive any instructions as to how you were supposed to react if Perley Moulton called you?

A Just react normal, just be myself.

Q So, you got a call you said on November 21st?

A Yes.

Q Did you get any other calls?

A I got two other calls after that. I'm not sure of the dates.

Q Were they recorded?

A Yes.

Q After these calls were recorded, what happened to the tapes that they were recorded on?

A I give them to Chief Keating.

Q And these tapes that you gave to Chief Keating were telephone conversations between you and Mr. Moulton; is that right?

A Yes.

Q Who called who, or who called whom, I guess I should say, in order to establish these telephone conversations?

A Well, he called me twice, and then he had called and I wasn't home, and I was to call him back. And I called him back.

Q How did you know you were supposed to call him back?

A My wife told me. He give my wife the message.

[28]

Q So, those were three tapes that you turned over to the police after you talked to Perley Moulton on the telephone?

A Yes.

Q Now, subsequently, a body wire was placed on you; is that correct?

A Yes.

Q In other words, another listening device was placed on your body?

A Yes.

Q By whom?

A Chief Keating and Detective Kelley.

Q When was this done?

A The 26th.

Q The 26th of?

A December.

Q The day after Christmas?

A Yes.

- Q And were you expecting to see Mr. Moulton that day?
- A Yes.
- Q And had you discussed when Mr. Moulton was to arrive where you were to meet each other at anytime?
- A Well, just that we was going to be together the 26th.
- Q And when was that decided, that you were going to be together on the 26th?
- A About a week before that.

[29]

- Q And how was that decided?
- A Over the phone.
- Q Over the phone. So, it was established that you were going to have a meeting with Mr. Moulton at your --- was that at your trailer?
- A Yes.

- Q On the 26th?
- A Yes.
- Q And did Mr. Moulton arrive on the 26th?
- A Yes.
- Q And the officers were listening on this listening device?
- A Yes.
- Q And do they have a tape of that to your knowledge?
- A Yes.
- Q Now, with the exception of --- Did you have any other contact from the time of meeting at Jed's until December 26th, did you have any other contact whatsoever with Perley Moulton other than what you've testified to, the contact on the 26th, on the body wire, and the three telephone conversations, was there any other contact?
- A I don't believe so, no.

Q You didn't talk to him in any other regard?

A Just on the phone.

Q But as I'm saying, did you talk with him in any unrecorded conversations on the phone between those dates?

[30]

A No.

Q They were all recorded?

A Yes.

Q Now, after December 26th, did you speak with Mr. Moulton again prior to any Grand Jury proceeding?

A Yes.

Q And where did that take place?

A The Ground Round in Bangor.

Q And did you later tell Chief Keating what transpired at the Ground Round in Bangor?

A Yes.

Q And he wrote it down?

A Yes, I believe so.

Q But there was no recording of that meeting; is that correct?

A No, there wasn't.

Q Do you remember when that meeting took place?

A I'm not sure of the date, no.

Q How did you become aware that you were going to be meeting with Mr. Moulton on that day?

A A phone call.

Q A phone call?

A Yes.

Q At your home?

A Yes.

[31]

Q From Mr. Moulton?

A Yes.

Q Who was where? Do you know where he was at the time?

A I believe at Don Marcia's house.

Q Don Marcia's residence?

A Yes.

Q What did Mr. Moulton say on the phone at that time?

A Just that we, you know, that we ought to talk and, you know, go out somewheres.

Q And following his --- did he call you, or did you call him?

A He called me.

Q He called you and said "we ought to talk and go out somewhere", and that's when you went to the Ground Round?

A Yes.

MR. ANDERSON: Your Honor, I have no further questions of this witness.

I would just say at this point that the evidence that the State has that could possibly be subject to suppression in this hearing consists of tapes of those three telephone conversations that Mr. Colson testified about, a tape from the body wire, and Mr. Keating's notes concerning this meeting at the Ground Round which took place. I have transcriptions of those that could offer as exhibits to the Court because I think the content of

[32]

those is very important in order to decide the issues that the Court would be facing today.



THE COURT: Well, that's exactly what I was going to suggest. I don't particularly want to know what the contents are except that if I understand this witness correctly, the purpose of the original meeting with the Police Chief only indirectly had anything to do with the offenses that he was charged with, but more because he was receiving threats, and that was what precipitated it.

Now, do any of the conversations that he had over the telephone or by this listening device he had on his person, or his last conversation that he had with the defendant, did that have anything at all to do with the charges that ---

MR. ANDERSON: Yes, there's a lot of information, particularly on the final tape body wire; there's a lot of information damaging to the defendant during that

period of time. There was discussion as to their planned defense for the charges that they were facing. So, there is that type of information on it.

THE COURT: All right. That's all I wanted to know. Okay. And I would assume that for that reason we don't have to go into the contents of that because I assume that defense counsel has, or if it doesn't have, will have the opportunity to listen to the tapes.

[33]

THE COURT: Have you had an opportunity to listen to the tapes?

MR. BEARDSLEY: Yes, I have.

THE COURT: Okay; fine.

MR. ANDERSON: Just one comment. I think that the tape, or at least the transcript should be looked at in order to

--- The issue today is going to be whether information concerning crimes that Mr. Moulton already had been indicted on had been elicited by Mr. Colson -- I mean, I think that that is the issue without getting into argument at this point, and in order to determine that, the circumstances surrounding the tapes as well as the actual transcriptions themselves are very relevant to that.

MR. BEARDSLEY: The body tape especially.

THE COURT: Okay.

--CROSS-EXAMINATION--

BY MR. BEARDSLEY:

Q Gary, when you started to talk with Officer Keating, the case was a good two years old; isn't that right?

A Yes, it is.

Q And you had been through a number of hearings regarding this matter?

A Yes.

Q And you had been through a number of lawyers yourself; isn't that right?

[34]

A Yes.

Q And you knew that I represented Perley?

A Yes.

Q And had been representing him in the past couple of years?

A Yes.

Q And was representing him right through until today?

A Yes.

Q You knew that personally?

A Yes.

Q You didn't have to be told that by the Police Chief or anything else?

A No.

Q They knew that I had been representing Perley too, didn't they?

A Yes.

Q In fact, my name came up in some of your conversations about "Beardsley sent me this, told me that", or something like that in some of these conversations that were taped?

A Yes.

Q So, there's no question that everybody knew that Perley had a lawyer?

A Yes.

Q Isn't that correct, everybody knew that Perley was represented by a lawyer?

A Yes.

[35]

Q Now, by any chance in any of these phone calls that were taped, you didn't tell Perley that you were taping him, did you?

A No.

Q And the body tape, you never said that you were taping him?

A No.

Q You didn't tell him that he had a right to have a lawyer with him when he talked with you obviously ---

MR. ANDERSON: Your Honor, the State agrees that these precautions were not taken, and that Mr. Moulton ---

THE COURT: I think the tapes eventually will speak for themselves anyway.

Q Now, was it your idea about these tape recordings, or did the police suggest it might be a good way of getting evidence against Perley?

A Well, the reason the tape recording --- the bug was put on the phone was to receive the threatening phone calls to see if they could find out who it was.

Q Okay. Now, did you tape every conversation that came in on the phone, every phone call that came into your house?

A Yes, I had turned it on on every one that came in, but if it was someone I knew, I turned it back off.

Q And I take it then that you only taped the conversations of Perley Moulton; is that correct?

A Yes.

[36]

Q And Perley never threatened you in those conversations, did he?

A No.

Q But you taped them anyway?

A Yes.

Q And it was your purpose though --- Now, these threatening phone calls, you know Perley's voice when you hear it, I mean, you were good friends?

A Yes.

Q And you recognize his voice when he calls?

A Yes.

Q And on those three phone calls, I take it you knew it was Perley because you recognized his voice?

A Yes.

Q And you've already testified that he didn't threaten you in any of those calls?

A No.

Q Now, I take it that you could not identify the person who made the threatening calls to you?



A No.

Q And did the police suggest also that it would be a good idea not only to tape the threatening phone calls but to tape Perley's calls too?

A Yes.

Q So, you went along with their suggestions on taping

[37]

Perley's calls?

A Yes.

Q Even though you did not recognize his voice as the person that was threatening you?

A Right.

Q Now, regarding the body tape, whose suggestion was that?

A The Police Department's.

Q And did Officer Keating and Rex indicate how it could be worked and everything to you?

A Yes.

Q Did you immediately indicate that you would go along with this?

A Yes.

Q And I take it that this also was for the purpose to find out if threats were going to be made to you, or was this just to tape Perley?

A No, it was to find out the status.

Q It wasn't to tape Perley?

A It was also to find out if there was anything else that they was going to do to the Elwells or anybody else.

Q Up to this point, Perley had't made any threats to you personally?

A Not to me, no.

Q And that's what your main concern was when you went to the police; is that correct?

[38]

A Yes, sir.

Q So, when they put the body wire on you, it was not pertaining to the threats specifically against you, it was relating to the Elwells and the other things that you were talking about?

A Well, that and plus my safety.

Q Okay, I didn't understand. I thought that you just said that Perley hadn't threatened you up to this point?

A He hadn't.

Q He hasn't yet, has he?

A No.

Q It was just for your safety in case he did make a threat?

A In case something happened, yes.

Q And you've known Perley a long time?

A Quite a while.

Q And you didn't expect anything to happen, did you?

A No.

Q And you're saying that they told you just to carry on normal conversations?

A Yes.

Q And they suggested that if something was brought up relating to the break or to the Elwells or anything like that, to talk about it with Perley?

A Yes.

Q And didn't you inquire of Perley as to how he was going

[39]

to carry out these threats?

A No.

Q You didn't make any inquiry at all?

A No, everything was brought up perhaps first before we discussed it.

Q Well, how about the part where Perley said --- when Perley brought up the thing from the "SOLDIER OF FORTUNE" magazine about hauling out darts, putting in poison, things like that?

A Hm-hmm.

Q Didn't he initially say it would be stupid to carry out a threat because it wouldn't work, and you said "well, how would you do it anyway"? Is that possible that you said something like that?

A I don't remember exactly what I said.

Q Okay. It's possible then you may have asked him some questions about how he was going to carry out certain threats?

A After we probably got into the conversation, yes.

Q Now, you indicated that you got into the killing of the Elwells. You were the one that was supposed to do it; is that right?

A That was one way, yes.

Q And you're saying that you didn't carry on any conversation regarding that at all or that Perley did all the

[40]

talking?

A No, I just talked --- when we got into the conversation, I talked.

Q Would you say it was fairly along in the conversation and you talked about other things too?

A We talked about a lot of things.

Q Okay. And nothing had anything to do with these threats against you, I take it?

A No.

Q You never even told Perley that you had threats against you, did you?

A No.

Q You indicated that you taped all the other phone calls that came in when they initially started. Did you answer and talk a few lines?

A I tried to find out who it was and then I would turn the recorder off, but the recorder was on every time I picked up the phone.

Q So, those initial conversations that you had with everybody over that three or four week period, at least the first few lines should have been recorded; is that right?

A Yes.

Q And did you ever talk to Don Marcia during that time?

THE COURT: What's that go to do with this motion? It's immaterial who he talked to and what they

[41]

discussed. Let's stick to this particular motion.

BY MR. BEARDSLEY: (continuing)

Q You indicated that the only contact you had with Perley during that time were the three phone conversations and when you went up --- with the body wire and you went up to the Ground Round; is that right?

A I believe so, yes.

Q Didn't you have any other contact by mail or by telephone?



THE COURT: What's that got to do with this motion? We are determining whether or not the use of the wire is illegal so that any conversation that transpired between them is suppressable.

MR. BEARDSLEY: All right. May I have just a moment? --(Pause)--

Q Now, was this your tape recorder or the Police Department's?

A The Police Department's.

Q And did they show you how to operate it?

A Yes, they did.

Q And did they give you a little instruction, a demonstration, example of how to do it on other telephones?

A No.

Q How about the body wire? Had you tried that before the actual incident?

A Just that morning.

[42]

Q And they put it right on you?

A Yes.

Q And you tried it out to see how it worked?

A Yes.

Q And did you try it out with anybody else, or were you just waiting for Perley to use it on him?

A Just for Perley.

Q Okay. And Perley didn't have any knowledge that you had the wire on you, I take it?

A No, I don't believe so.

Q And the Police were outside your trailer or across the street?

A Yes.

Q Now, were you told anything as to how to approach Perley on the wire, on the body wire?

A Just to be myself.

Q Did they ask you to discuss the threats that were made against you?

A No.

Q How far away were the police from you when this body wire was going on?

THE COURT: What difference does it make?

MR. BEARDSLEY: Well, I want to know if they were in the building or if they were --- I mean, were you close enough so that if you were threatened they could

[43]

jump right there?

A Yes.

Q I mean, they weren't inside your building?

A No.

Q They were within a couple of hundred yards?

A Yes.

Q Now, when this initially came up, now you indicated that they wanted you to talk to your lawyer before you spoke with the Police; is that correct?

A Yes.

Q And I take it your lawyer had some discussions with the Police too?

A Yes, I imagine.

Q And I take it that the discussions had something to do with your lawyer's concern with whether or not you were going to be charged with more crimes?

THE COURT: That is completely immaterial. It has nothing to do with this Motion to-Suppress.

MR. BEARDSLEY: Well, I think it does.

THE COURT: Well, I understand what you're going to say. I told you before that we're not going to use this as a pre-trial discovery process, that the issue here is relatively narrow. Let's stay within the narrow confines of this motion.

[44]

BY MR. BEARDSLEY: (continuing)

Q When you initially went to the Police they wouldn't talk to you; is that correct?

A That's right.

Q They only talked to you after you spoke to your lawyer?

A After I had spoken to my lawyer first.

Q After you had spoken to your lawyer?

A Yes.

Q And I take it your lawyer spoke with them too?

A He set up a meeting.

Q So, there was a meeting between all of you first?

A Yes.

Q And the meeting also had to do with you giving statements as to what happened in all these breaks and everything; is that correct?

A Yes.

Q Not just the threats, but all these charges that you were ---

A Everything.

Q Everything. And then they came out with cooperating with them regarding the telephone calls?

A Yes, they asked me to tape the phone calls, yes.

Q Okay. That was after you had given your statements relating to all these other charges?

A Yes.

Q And also the body tape too?

[45]

A Yes.

Q Okay. And that came after your initial complaint just regarding some telephone threat made by an anonymous phone call?

A Yes.

Q And it was clear that the police wanted Perley's statement either by the phone or by the wire tap, and they thought they could get it through you; is that correct?

MR. ANDERSON: I object to the qualifications of this witness to answer that question.

THE COURT: Well, I think that --- I am somewhat also concerned with the purposes of the use of this equipment, whether it

was for one reason or for another reason. I'd like to have this man --- I'm sure he may indicate to the Court what he understood the purpose of the taped telephone calls and also the body device. I'd like to have him indicate to the Court what he understood the purpose to be. Can (addressing witness) you tell me what that purpose was?

THE WITNESS: Number 1 was my safety.

THE COURT: Okay. What's number 2?

THE WITNESS: Number 2 was to --- for any other plans to do away with any of the witnesses.

THE COURT: Okay. And was there a number 3?

THE WITNESS: No.

[46]

THE COURT: Okay.



BY MR. BEARDSLEY: (continuing)

Q Now, you indicated that a lot of these phone calls had nothing to do with doing away with witnesses at all ---

THE COURT: The telephone calls, obviously you have copies of them, the Court will have them; they speak for themselves. Let's not go through those calls, the contents of those telephone calls.

MR. BEARDSLEY: If I could have just a minute, Your Honor. --(Pause)--

Q Did the Police ever indicate their concern to you that Perley was represented by a lawyer during all this time?

A I don't know if I understand what you mean.

Q They all knew that I represented him; is that correct?

A Yes.

MR. BEARDSLEY: I have nothing further at this time.

MR. ANDERSON: I have nothing, Your Honor.

THE COURT: You may step down, sir.  
(Whereupon the witness was excused)

+++++

MR. ANDERSON: Robert Keating?

(The witness comes forward, takes the stand, and is duly sworn by the Clerk, Joyce Page)

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ROBERT KEATING, called by the State, having been duly sworn, testified as follows:

--DIRECT EXAMINATION--

BY MR. ANDERSON:

Q Your name is Robert Keating and you're the Chief of the Belfast Police Department?

A Yes, sir, that's correct.

Q And in that capacity did you have --- were you the investigating officer, so to speak, or one of the investigating officers concerning several thefts that turned up as a result of a search at the former Belfast Dodge on Route 137 in Belfast, Maine?

A Yes, I was.

Q And in that capacity what did you do? Did you interview people and just conduct an investigation?

A Yes, sir.

Q Now, at any point did you receive a phone call from Gary Colson?

A Yes, sir, I did.

Q Now, you knew Gary Colson to be a person who had been indicated [sic] on these offenses, didn't you?

A That's correct.

Q And you knew that Perley Moulton had been indicted as well?

A Yes, that's correct.

[48]

Q And you knew that they were --- you could term them as co-defendants?

A Yes, sir.

Q In one particular type of criminal incident?

A Yes, sir.

Q Now, that incident had not been resolved by trial or anything, it was a pending criminal investigation as far as you knew?

A Yes, sir.

Q And there was going to be a trial at some point, or something was going to happen?

A Yes, sir.

Q Now, when did you talk to Gary Colson?

A November 4th of 1982 was when I received information that Gary Colson wanted me to call him.

Q So, what happened?

A I was on routine patrol, I stopped at my residence to use the telephone, and I called Gary Colson.

Q And what happened during that conversation with Gary Colson back then?

A Gary indicated to me on the phone that he would like to talk to me, please set up a meeting for he and I to meet that afternoon on November 4th, and we did in fact meet in Stockton Springs.

Q And what transpired at that meeting in Stockton Springs?

[49]

A Gary told me at that time that he had received threats over the telephone, the most recent one was the night before -- this was on Thursday, November 4th, he said he had gotten one on Wednesday -- telling him to keep his mouth shut or he could wind up dead, threats along that line.

Q Now, did you discuss anything else with Gary?

A We discussed his situation in general. I told him because he had exercised his right to remain silent that I would not discuss any crimes that he was indicted for, or under indictment for, until he had talked to his attorney, and I could talk in generalities with him, but I would not talk with him about any crimes he was under indictment for.

- Q So, you gained no information concerning crimes that he or Perley Moulton had been indicted for at that time?
- A No, I did not.
- Q Isn't it true though that on November 9th and November 10th at Phil Ingerni's office in Bangor and later at the Orono Maine State Police barracks, you did learn about these crimes from Gary Colson?
- A That's correct, on November 9th at attorney Phillip Ingenri's office, and on November 10th at the Orono State Police barracks.
- Q So, you had discussions about the incidents that he had been charged with?

[50]

- A Yes, the incidents that he had been charged with; the conversation that he had with Perley Moulton on November 6th, we discussed at that time.
- Q What did he say about any discussion he had with Perley Moulton on November 6th?
- A He told us, and I believe it was on November 10th at the Orono State Police barracks, that on November 6th Perley Moulton had suggested a plan to him on how to eliminate one of the potential witnesses, a Gary Elwell, who lived in Northport, and in fact, Perley had gone into a discussion on how that could be achieved.
- Q And did you know that this Gary Elwell was going to be a witness in the case, a potential witness in the case?



A Yes, I did. I had questioned Gary Elwell once before formally, and once informally about the case.

Q So, it was on November 10th that you learned of this; is that right?

A That's correct.

Q What happened after that, after November 10th?

A We had several discussions and meetings with you, Detective Kelley and myself. We obtained a taping device to attach to a telephone, and on November 12th I provided Gary Elwell --- I'm sorry, Gary Colson, with that recording device to be installed on his phone.

Q Now, why did you want this recording device installed on Gary Colson's phone?

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A I really had two reasons at that point -- (1) it had been left by Perley Moulton that he was going to call Gary back when some of the plans had been finalized to eliminate Gary Elwell, one of our witnesses, and also the fact that Gary Colson had been receiving some threatening phone calls.

Q So, you placed the recording device on the phone?

A That's correct.

Q Did you have any discussions with Gary Colson as to how he was supposed to act if Perley Moulton were to call?

A Yes, I did.

Q And what was the nature of those discussions?

A I told him that I wanted him to just act normal; I told him that I did not

want him questioning Perley Moulton and trying to engage Perley into a conversation, but that if Perley called up and started to talk to him about any elimination of witnesses or anything, that he could discuss it with him, but I did not want him specifically asking questions or trying to get Perley to talk about it.

Q Okay. And in fact, three telephone calls were received that were recorded and handed over to you; is that right?

A In fact, there were a total of four, but only three went onto the recording. On one occasion the recording device did not work properly.

Q And how did you learn that?

[52]

A Each time that Gary received an incoming call and a conversation with Perley, he would let me know. He let me know about a phone call which I believe was New Year's Eve. He gave me a tape, and when I brought the tape back to my office, I played it to listen to the conversation and I found it to be blank.

Q So, you have no evidence of that discussion at all; is that correct?

A No, I do not.

Q And that was what, New Year's Eve?

A I'm pretty sure it was. I'd have to check my notes to be positive, but I'm sure it was a conversation on New Year's Eve in which Perley had contacted Gary about their meeting on New Year's Day I believe.

Q Now, do you know in fact whether these three tapes, or these three telephone conversations have been transcribed?

A Yes, they have.

Q And have you gone over them?

A Yes, I have.

Q And have you compared them to the tapes as you listened to the tapes?

A Yes, I have.

Q And isn't it true that sometimes it might be difficult to understand exactly what was said in certain places?

A Yes, it is. Sometimes there would be background noise

[53]

or laughter, or this type, and it would be hard to understand exactly what was said.

Q You've gone over the transcripts and related them to the tapes and acknowledging that there are problems in some places. Do you feel that these transcripts reflect what was on the tapes with the exception of things that were inaudible?

A Yes, I do.

Q And I guess I'll show you --- (Pause) I'm just going to show you a copy of each of these three telephone conversations, and ask you whether or not it is a transcript of the telephone conversation on a particular date that you received from --- it's from a tape that you received from Gary Colson. Would you examine these stapled pages that I'm showing you -- they'll be marked State's Exhibit #1. You don't have to read everything there, but have you seen that before?

A Yes, I have.

Q And what is that?

A This is a transcription of the first tape that I received which is a telephone recording of a conversation between Perley Moulton and Gary Colson which I received on November 22nd.

Q To your knowledge, is that the first one you received?

A Yes, it is.

[54]

Q Drawing your attention to what will be marked State's Exhibit #2, do you recognize what that is?

A Yes, this is a transcription of a tape recording via telephone of a conversation between Gary Elwell --- I'm sorry, Gary Colson and Perley Moulton given to me on December 2nd.

Q I notice that these say "revised" on them, or "reviewed" on them. What does that mean?

A It indicates that I have reviewed them. There are some pencilled in corrections where I listened to the tape, running and reading the transcription along with it.

Q Drawing your attention to what is marked State's Exhibit #3, can you identify what that is?

A This is a copy of a telephone conversation between Perley Moulton and Gary Colson which was on December 14, 1982.

Q And there are pencilled in corrections in parts of this. Do you know who is responsible for those?

A Yes, this is my writing, the pencilled in there, and I think there are several



places through there where I have pencilled in some corrections.

Q Someone else did the original transcript, you reviewed it, made a few corrections; is that what happened?

A That's correct.

Q Now, these are the three transcripts of the three tape recorded telephone conversations; is that correct?

[55]

A That's correct.

Q Now, at what point was it decided that this body wire might be appropriate, this so called body wire?

A Between the last phone recording that we had and Christmas Day, we learned that Perley Moulton was going to come to Belfast and wanted to meet with Gary Colson; in fact, he wanted to spend the

entire day with him the day after Christmas. It was between that period that we decided to put a body transmitter on Gary Colson.

Q Okay. And why was this body transmitter placed on him?

A For two reasons -- number (1) in my mind was his safety. At that point, he had received some threats; we did not know from whom those threats were coming; the risk that Perley might have realized that now Gary was cooperating with the Police, and (2) to see if we could hear and record any conversations about doing away with witnesses in the case or tampering with witnesses, trying to put pressure on witnesses, and for any other conversations that they might have.

Q Now, you have reviewed these three telephone conversations, have you?

A Yes, I have.

Q And was it in your mind, or were you aware of the possibility or probability that perhaps certain facets of the cases or the cases for which Perley Moulton was already

[56]

under indictment, were you aware that that might be discussed as well?

A Yes, I was.

Q You were aware of that?

A I was aware that they would probably talk about everything and anything. I really had no control over what they were going to talk about, but yes, I think I was aware of that.

Q But that didn't change your mind in having this body wire placed on Mr. Colson?

A No. I again had instructed, as had Detective Kelley instructed Gary Colson, not to attempt to question Perley Moulton, just be himself in his conversation, that he could agree or disagree with anything that he said, but I felt that I had an obligation in the course of my investigation to number (1) protect Gary Colson, and protect any other potential witnesses, and learn about any threats to eliminate witnesses or police officers in this case.

Q Now, you've testified that Gary Colson told you that he had been receiving anonymous telephone threats?

A That's correct.

Q And you've also testified that he told you that Perley Moulton devised a plan whereby he and Gary would perhaps kill Gary Elwell?

[57]

A Yes, he had told me about that conversation that had taken place on November 6th.

Q At Jed's?

A And then I learned again of one comment in one of the phone tapes where Perley made mention of that he had come up with a method, and I believed in my mind that that method was a way to eliminate somebody.

Q Now, had any other witnesses in the case ever given you any belief whatsoever, or caused you to believe that they too had been experiencing any

threatening gestures or threatening comments from anyone?

A Yes, I did.

Q Do you remember any names of witnesses who told you that they had been having problems in that regard?

A I had been told by Leslie Ducaster, also known as "Duke Ducaster", that he had been threatened on one occasion by Perley Moulton, and I believe that Don Marcia ---

Q Isn't that in fact discussed in this body wire taped phone conversation?

A Yes. I had also been told by a young man named Herman Peasley, who worked for Don Marcia, that he had been told on one occasion that a cup of acid could be thrown in his face, for those people who talked to police. And I had been told after, I believe it was

November 11th, by Gary Elwell that he too had received one threatening

[58]

phone call.

Q I'm showing you a folder which is marked State's Exhibit #4, and in it are pages marked --- numbered 1 through 122. Can you identify what that is?

A Yes. Without reading each page, that's a transcript of the body transmitter, the tape recordings that we received on December 26, 1982 when Gary Colson had a body transmitter on him, and we were recording the conversations between he and Perley Moulton.

Q And have you reviewed this before?

A Yes, I have.

Q And do you vouch that it has the same accuracy as the other three telephone

taped transcriptions that you looked at?

A Yes, I do.

Q Acknowledging that there are some inaudible or confusing sections?

A Yes.

Q Now, would you describe a little bit about how this, the mechanics of using the body wire on this particular day?

THE COURT: What difference does that make?

MR. ANDERSON: I just want to establish where he was in relation to the trailer.

THE COURT: Well, I don't think that's important; evidently the defense attorney thought it was important,

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you may inquire as to where they were in relation to one another.

BY MR. ANDERSON: (continuing)



Q Basically what does Gary Colson live in?

A Gary Colson lives in a mobile home on the Beech Hill Road in Northport. There are about four mobile homes in that and one mutual driveway. It's a small trailer park.

Q And this conversation took place there; is that right?

A Yes, in Gary Colson's trailer.

Q And where were you located?

A We were across the road from the trailer park, I would say maybe 150 yards from Gary Colson's trailer behind a sand pile which is owned by the town of Northport.

Q You and ---

A Detective Rexford Kelley of the Maine State Police.

MR. ANDERSON: Your Honor, I have no further questions. I guess at this point I

would say that for the purposes of this hearing I'm offering these exhibits for your perusal and for your examination. If you would prefer to listen to the tapes themselves, they are available.

THE COURT: You're going to have to convince me why the contents of that is material to me at all. I think that what was said is completely immaterial. What were the reasons that this was set up, of course, is

[60]

important to this Court. But if you can convince me that it's important that I read them, I'll do the best I can.

MR. ANDERSON: My only comment on that is that in order to determine the reason for the tapes, it is probably worthwhile to

at least get the tenor of the tapes to see whether it is obvious that this was a direct attempt to go out and elicit information from Perley Moulton about crimes that he had already been indicted for or whether it was not for that purpose.

THE COURT: Okay.

--CROSS-EXAMINATION--

BY MR. BEARDSLEY:

Q It is true, Officer Keating, that there is nothing in those phone conversations directly relating to any crime, is there?

A Directly relating to any crime?

THE COURT: I don't understand your question.

Q Well, I want to try to get the reason for the body tape sometime later on. Are you saying that threats --- I think I have a right to inquire ---

THE COURT: I think you may question him, but not to interpret the conversations that took place. You may question him concerning the tape itself, but what the tape said should speak for itself I should imagine.

[61]

MR. BEARDSLEY: Okay; fine.

BY MR. BEARDSLEY: (continuing)

Q Officer Keating, how many threats had Gary Colson received?

A He told me that he had received, I believe, a total of four, the last one being on November 3rd, the day before he contacted me.

Q And were they men or women making these threats?

A They were male voices he told me.

Q Were they the same male voice or different?

A I believe he told me, as I remember it, that he thought it was the same male caller each time.

Q And did he give you the exact dates of these calls?

A No, other than --- the only one that I can recall specifically was the one he told me he had received the day before which would have been November 3rd of '82.

Q And because these threats were made to him, you didn't see fit to put it in any police reports; is that correct?

A I didn't see fit --- I don't understand. It's in my report that was filed with the District Attorney, and I believe it was provided to you in discovery.

Q Relating that there were four calls by a male voice?

A No, I'm talking about the threat on November 3rd, the conversation that he and I had on November 4th.

Q There were no threats in the phone conversations by

[62]

Perley Moulton to Gary Colson; is that correct?

A Not to Gary Colson, no.

Q And I take it that you had told Gary that if Perley called to tape the whole conversation?

A I had told Gary Colson that if he received any calls, and it was a threatening phone call that he was to record it. I also told him if Perley Moulton called that he was to record that in its entirety.

Q Regardless of what the phone conversation was about?

A That's correct.

Q Now, you indicated that there was --- that Gary Elwell had a threatening phone call?

A Gary Elwell told us that on November the 11th that he had received one threatening phone call.

Q Did you provide him with a phone tap?

A No, I did not.

Q How about Ducaster?

A No, I did not. He did not tell me that he had been threatened by phone; he told me he had been threatened in person.

Q Okay. Gary Elwell was the only other one that had been threatened by phone?

A That's correct.

Q And you did not see fit to protect him?

THE COURT: Once again, you're starting to get

[63]

beyond the scope of your motion.

MR. BEARDSLEY: Excuse me, Your Honor.

I'll try to get back on track.

BY MR. BEARDSLEY: (continuing)

Q You indicated the purpose was to prevent further threats against Gary Colson?

A That's correct. The purpose you're talking about of the phone ---

Q The tap.

A Yes, and also the purpose to see if there was any finalized plan on eliminating witnesses. On November 11th we cautioned Gary Elwell that his life might be in danger, and that the

---



Q You didn't post a police officer at Gary Colson's house?

A No, sir, I did not.

Q Did you give any instructions to his wife?

THE COURT: That's totally immaterial. Let's stay within the scope of this motion as to whether or not there was a legal process in setting up the tape recording. What he said to his wife is completely immaterial.

BY MR. BEARDSLEY: (continuing)

Q Were there any signal words that you gave to Gary Colson when the body wire was on him, in case his life was threatened that he was to give in case, you know, Perley was ---

[64]

A Any signal words, no, sir, there were not.

Q Did you tell him to tape every phone conversation that came in until he could tell whether or not it was threatening?

A That's correct. I told him to be prepared so that when he answered the phone, if there was a threatening phone call that he could turn the machine on and record it, and that he should be prepared and have it right next to the phone.

Q Did you give any explanation of why only the phone conversations of Perley Moulton should be recorded and not if anybody else called?

A Because I believe if it was his mother calling, for an example, that he wouldn't record it.

Q But he said that he did though, he said that he recorded every phone conversation that came in until he could determine who it was.

A I believe he turned the machine on and started to shut it off immediately as soon as he realized who the caller was and that it was not a threat or it was not Perley.

Q You admit though that there are no other phone conversations on those tapes other than Perley Moulton calling?

A That's correct.

Q There's nothing else, no picking up of another person saying "Hello, how are you"?

[65]

A No, there is not.

Q Did Gary Colson say that the threats against others like Gary Elwell were also made over the phone by Perley Moulton prior to starting taping?

A Did Gary Colson tell me what?

Q In other words, Gary Colson came to your office initially?

A On November 4th we met in Stockton Springs, not in my office.

Q He said "I've received threats; I've also talked with Perley and he has been threatening other people"?

A On November 4th?

Q Well, before you started taping phone conversations.

A Before I started taping any phone conversations, I was aware of a plan to eliminate witnesses ---

Q Gary Elwell?

A That's right, Gary Elwell. I was aware that Gary Colson was being threatened, and I was aware that Gary Elwell had received at least one threat.

Q And you received this information from Gary Colson?

A Gary Colson and Gary Elwell.

Q Did Gary Colson tell you that ---

THE COURT: You're again going outside of the scope. I will allow you to get a little discovery, but not total discovery in this proceeding. I'm sure you can get that information from the State.

[66]

MR. BEARDSLEY: I have nothing further of this witness.

MR. ANDERSON: Nor do I. There has been discussion of another non-taped conversation at the Ground Round, and I

would offer that --I don't have a copy of it right now -- and add it to this. It would come under the same standard because it would be conversation by Perley Moulton to Gary Colson after indictment, after counsel had been retained and all that.

MR. BEARDSLEY: I would certainly ask that those statements be suppressed. Those aren't the result of any tape recording or anything. It's just Gary Colson ---

MR. ANDERSON: I realize that.

MR. BEARDSLEY: -- relating what took place and his recollection of what Perley said and they just typed it up.

MR. ANDERSON: That's just like any other statements of the defendant. It's not recorded, but it's the same theory.

THE COURT: Now, what is your position? I don't understand what your position is.

Whatever took place at --- what is it, the Ground Round they call it?

MR. ANDERSON: Yes.

THE COURT: As between this defendant and the

[67]

witness Colson, I assume that that's Colson's version?

MR. ANDERSON: Yes.

THE COURT: And is your position that his testimony if he should take the witness stand and testify as to that conversation is suppressable?

MR. BEARDSLEY: No, he's trying to introduce the ---

THE COURT: Well, that's what I say. I don't think that that's material at all in this particular instance.

MR. ANDERSON: Well, it is a statement, and conceivably, according to their theory, it's made to a police agent at least, and therefore, may be suppressed. The fact that it's a statement written by a police officer rather than recorded is irrelevant.

MR. BEARDSLEY: I would agree with him in that any statements made by my client are suppressable in that instance because

---

THE COURT: Because why?

MR. BEARDSLEY: Gary Colson didn't identify himself as a police agent; he entered into a conversation with the specific intent of getting statements out of Perley Moulton, and there was no advice that he had a right to seek counsel. So, I would ask that those statements be suppressed as well, definitely.



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THE COURT: Okay, I understand. So, you're going to admit them --- I mean, as being the conversation -- whether I suppress them or not --- you're just putting them in as an exhibit.

MR. ANDERSON: Yes, the fifth exhibit, Your Honor.

THE COURT: Yes, okay.

You may step down, sir.

(Whereupon the witness was excused)

+ + + + +

I would like to ask one question though if I may. Was this defendant, Moulton, charged with conspiracy to ---

MR. ANDERSON: No, he has not been charged with any conspiracy or solicitation as a result of any of these conversations.

THE COURT: Okay.

\* \* \*

TRANSCRIPT OF RECORDED  
TELEPHONE CONVERSATION  
BETWEEN PERLEY MOULTON,  
JR., AND GARY COLSON ON  
DECEMBER 14, 1982 AT  
9:30 P.M.

P. = Perley Moulton, Jr.

G. = Gary Colson

[20]

\* \* \*

P. Yeah, yeah. I I talked to a few people.

G. Yeah.

P. But ah, he's gonna get back to me on it. And ah, well I I gotta talk to you when I get up there, anyway. So you know, Sunday, are you gonna be available Sunday? So I can talk to you? That Sunday after Christmas?

G. Yeah.

P. Cuz I want to be, I want to get together with you the entire day and ah and go for it. You know what I mean? Yeah, just want to ah, review the whole plan.

G. Ok.

P. You know, I'd like to get together.

G. Yeah, I want to talk to you about what you said earlier too. You had something in the works there.

P. Yeah.

G. Ok?

P. Oh yeah.

G. Yeah, alright, we can talk Sunday anyway.

P. Yeah, that's coming up next week, yeah. Next Sunday.

G. Week after....

P. The 26th.

G. Right, that's the week after, this....

P. Right.

G. This Sunday, right?

P. Right.

G. A week from this Sunday coming?

P. Right, day after Christmas.

G. Yeah, ok.

P. And ah, I don't know, gotta get together with some people. Shut our mouths off and stuff, see what's happening.

G. Ok, Yeah, I think that's a good idea cuz we're gonna have to get some

P. We've gotta get our shh, we've gotta get our shit together Gary and ah and ah, there's no ah, we can't frig around anymore.

[21]

G. Yeah.

P. Gotta know what's doing down.

G. Yeah. I sure do.

P. And I'm telling you, you gotta keep running it through your mind after we go through it. You want to run it through your mind.

G. You got the whole report don't you?

P. I got everything.

G. Yeah, ok. See, I don't have everything.

P. Ok, well I'll bring it up with me.

\* \* \*

TRANSCRIPT OF BODY-WIRED  
MEETING BETWEEN PERLEY  
MOULTON, JR., AND GARY  
COLSON ON DECEMBER 26,  
1982

P. = Perley Moulton, Jr.

G. = Gary Colson

(The following portions of the Transcript were admitted as State's Exhibit #25 at Mr. Moulton's trial.)

[16]

\* \* \*

G. That was the worst fucking night of my life. I don't know. I don't know its a toss up between the Mustang and the pick up. Which one didn't have the heater in it?

P. The pick up probably.

G. I think it was the pick up. Didn't have remember?

- P. I don't remember. If it had a heater  
or not. I don't remember. I remember  
it going down the road.
- G. You know.  
(Laughing)
- G. It plowed pretty good.
- P. Yes, it did, a little light in the back.  
(Laughing) (Inaudible)
- P. Had to throw chains out. Amway.

\* \* \*

[23]

\* \* \*

- G. Oh boy, I just hope I can make it  
through this. Good, cuz I want you to  
help me with some dates. One date I  
cannot remember Caps, just can't  
remember, I know it was in December,  
what night did we break into Lothrop  
Ford? What date?

- P. The 12th.
- G. Of December.
- P. I think so, I don't know though, I'm  
not sure, I think it was the 12th.  
(Laughing)
- P. Because all that stuff stayed out in  
the truck, remember?
- G. How many times did we drill them  
fucking locks, humh?
- G. Well, we tried 3 doors.
- P. Let me see, we tried 3 doors  
(Inaudible)....then eventually we tried  
kicking the door in, then we gave up,  
somebody else must have broke in.  
(Laughing)
- G. I wish, I kind of wish that happened  
now.
- P. I don't regret it mother fucker.
- P. I really don't.
- G. You know something.



[24]

P. I enjoyed it myself.

(Laughing)

G. Oh shit, remember, remember when we took the pick up out through there and we, and we dumped all the stuff off it, that truck out back. Then I drove it back and then we, then I dumped it into whatever pond it was out there.

P. Sanborn's Pond.

G. Sanborn's Pond right.

(The following parts of this page and page 25 were not admitted at Mr. Moulton's trial.)

G. What's the discovery?

P. Lets see its the end of Ducasters report.

G. Oh Jesus, that come out good.

P. Thats the only good one there is really.

G. There not gonna help our chances in court at all. I have written to the District Attorney for better copies, but these are the best I can do for now.  
(Laughing)

O.K., anyway see what do I do?

P. I did, I went through all my bullshit for trials and all the transcripts and reports and shit and I picked out the ones with the dates. Donald Martin, a mustang, that mustang was stolen  
(Inaudible).

G. Ah, thats a vehicle report wasn't it?

P. On 12-13-80, December 12, ah December 13, 1980, that mustang was stolen.

G. Then we couldn't have broken into Lothrop Ford the 12th.

P. Yeah, I knew some 12th was some dates.

G. There's no way we could have then, this is after, right?

[25]

P. Yeah.

G. Wasn't Lothrop Ford our first biggy? 12-13-80, you remember what day that was?

P. Yep.

G. You can?

P. The night we went to Phillips, Maine, to look at a Mustang.

G. And, ahh my ex-wifey will ahh will ahh----

P. Testify for ya probably.

P. (Inaudible) lie for you?

G. Yeah, she will.

\* \* \*

(The following portions of the Transcript were admitted as State's Exhibit #26 at Mr. Moulton's trial.)

[33]

\* \* \*

P. Um, look at this I, I like this. I read this fucking section and it blew my mind. Ah, received a call from Rex Kelley and found there were some potatoes had been dumped along side the road. No evidence. No further evidence was found in the area. In Waldo.

P. You can't remember? (Inaudible)

G. In Waldo?

P. You don't remember....the.... truck went up there and dumped a load in the middle of the road.

G. I do now, laughing, too bad we couldn't have emptied it thought whew!

[34]

P. I know it.

G. Hunh?

P. I know it stunks.

P. Still ah...

G. Still half a truck load of God Damn potatoes when we got it to the garage Caps.

P. What was we supposed to take the time to get up there with a shovel?

(Laughing)

And knock it loose.

G. (Inaudible)..did you follow me, yah, you followed me up there, or did you, no. Yah, you did. O.K.

P. Just in case... (Inaudible)

G. I couldn't remember.

P. I should have, should have left it right there with the potatoes.

\* \* \*

[35]

\* \* \*

P. One thing I got to come up with is a bill of sale.

G. Bill of sale for what?

P. Ford parts.

G. You got one?

P. Oh, yeah spares.

G. Well you haven't got one.

P. Unh-Unh.

P. Where did all the spare Ford parts come from stored in the spare room then I said, I said I bought them from a Cliff Stueben from Brooks. Can you give me a description of him?

P. Yeah, he's about 5 (Inaudible) beard.

P. How much did you pay for them?

\$150

Didn't you think something was funny when he only wanted material?

No, he told me he was going out of business and he wanted to sell these things in (Inaudible) and he told me he'd give me a good deal.

G. Five foot what?

G. Five foot nine, dark hair and beard.

G. Now you done something, something?

P. I, I did that so I'd remember who it was so I, I you know.

Clifton Larrabee? Shirley's nephew?

[36]

G. Yeah.

P. I made it up of him so I'd remember it. (Laughing)

P. When he got off the stand he'll say (Inaudible) have you ever seen that mother fucker before? Has he seen you since? Yah, I seen him since. I'll say I seen him with Shirley Larrabee. Him cruising him and Shirley Larrabee cruising around.

P. So if you want some information from Cliff Stueben, ask Shirley Larrabee.

\* \* \*

[41]

(The following part of this page was not admitted at Mr. Moulton's trial.)

P. Well thats what Beardsley told me, he says that all we ought, he told me to be prepared to go to jail.

G. Thats nice of him.



P. Yeah, well he told me, he says be prepared, he says be prepared. Prepare for your worst, but then hope for the best. That's why Beardsley always tells me. And I told him, I said, well what happens, what happens. There aint nothing I can do about it. All I can do is just, all we can do is work our ass off and see if we can defend ourselves any better. Cuz right now, theres, cuz theres (Inaudible)

(The remainder of page 41 was admitted at Mr. Moulton's trial as part of State's Exhibit #26.)

G. O.K. there's another thing now we still don't know what date Lothrop Ford was broken into. O.K., we stole the Mustang on the 13th of December and we stole the dump truck on the 13th of January.

P. That date....

G. They're exactly a month apart, how about that?

P. So probably, Lothrop Ford was the 13th of November.

G. Oh shh- what do you think killed us on this?

P. Dump truck.

G. Thought about it and though about it and thought about it.

P. Definitely the dump truck. Yeah, we shit in your own back yard. We got money hungry, well we was hurting for money.

G. Yeah, we was, was hurting for money bad.

G. Remember, I couldn't come up with fucking rent money for that trailer down there?

What I should have done was stay working at the school department.

(The following portions of the Transcript were admitted as State's Exhibit #27 at Mr. Moulton's trial.)

[72]

P. I don't know, it was quite late though, that night that we stole the dump truck.

G. I mean ahh, the pick up truck.

P. I don't remember what fucking time it was (Inaudible).

G. I'll tell you something, I'll tell you why. It doesn't make no difference if its thrown out. O.K., that don't make no difference but I remember we rode for hours.....

P. Looking for one.

G. Looking for one. Remember?

And you know another thing that bothered me? Was some guy we recognized Don's truck? No, we didn't recognize Don's truck.

G. He gave some kind of description of it?

P. Yeah, yeah the Ford or some fucking thing?

G. He did say the color didn't he? Didn't he say it was black and tan, or tan and black or something? Remember he got nervous it, and we told Don to scrape that frigging road runner off that Cap?

P. Yeah.

G. Or take the cap off or something?

P. Yeah, I remember because some guy was standing right out there.

\* \* \*

[75]

\* \* \*

G. Just like Richard Rumney, and his tire tracks.

P. Well, it worked.

G. Hah?

P. It worked (Laughing)

G. Yeah, but you aint gonna tell me that son of a bitch followed them tracks up the God Damn road, Caps.

P. Well, I'll tell you something, that other guy he... he's full of shit.

G. Up the tar road.

P. He's full of shit also, because I went over there and there and erased

[76]

those fucking tracks going into that fucking bay, I got pictures of it. I took, remember when Cathy and I went over there and took pictures going into that bay. Not a fucking tire track that went into that fucking bay.

G. He says there was.

P. He says there was.

G. I remember you took pictures of the front of that door.

P. Yeah, like Cathy held.

G. I remember the snow was up against it.

P. Yeah.

G. February 17th.

G. Is that the date on pictures?

P. I had to sign these and Cathy help the sign and the date and every fucking thing.

G. I do remember that.

Ah yes, I do remember most of it.

\* \* \*

[89]

\* \* \*

P. Well, I, I want to drill this into our fucking heads.

P. Let me just scratch through this thing.

G. Ask me some questions Caps?

P. (Inaudible)

G. You don't mind if I stand up for a minute do you?

Jesus! what time is it anyways?

P. O.K., the green Ford Mustang here in the back bay, behind the pick up truck.

G. Mm-mm

P. How long was the fucker sitting in that back bay?

G. Sigh, Jees, that, thats been sitting there for...

P. Since the end of December up near the, sitting there, been there ever since, where was he supposed to put it?

G. Yeah, that's not why.

P. So it's been sitting there ever since, since we took the garage over. I wonder if its been in there ever since we took the garage over? Since we pushed it in there.

[90]

G. Well, I think it actually was though.

P. It was?

I think we actually pushed it in with the pick up truck with the 4 wheel drive.

(Sigh)

P. Didn't we?

G. Yeah, we did.

P. I think so. Anyway, you say it says, it says right here Keating, when I was....

G. No, Fowler pushed that in for us didn't he?

P. Maybe he did with a bulldozer.

G. I think Fowler pushed it in. I'm almost, I'd almost bet on it. That don't make no difference.

I'll just say its been sitting there  
(Noise)



P. This is the statement where you....

G. It's there then?

P. Some of it, just the end of it. Also he further stated that Perley Moulton did not have anything to do with the rear bays at the, at the structure. He said that he never goes out there and doesn't, doesn't know anything about the 4 wheel drive pick up.

Well the pick up doesn't matter anyway.

P. This is your interview down in the police station.

G. That's thrown out.

P. ....green Mustang had parked out there. He said that he didn't know anything about, about all of the Ford parts and accessories that were (Inaudible). He said that Perley Moulton had them. He said that he came to work one morning and the

[91]

box of gaskets were just sitting there. He said that he thought Perley Moulton had gotten them. He said that I'm hardly ever out there and I have never see the stuff before. (Inaudible)

G. Boy, I'm denying everything.

(Noise in background) (Spoon stirring in cup)

P. See ya got, I could see where you got all fucked up in the first interview.

G. Yeah, so don't I.

P. You didn't know what to say, what to lie about, what to not lie...

G. Well, we, we hAdn't discussed nothing.

\* \* \*

[97]

\* \* \*

G. What time did we arrive home?

P. It was just before 11 I believe, oh  
what was I gonna write?

G. What time did we break in that night?  
Must have been early.

P. It was early. It was like 8:30 or 9:00.  
It was early.

G. I think it was before that, I think it  
was 8:00.

F. Yeah, as soon as it got dark. It got  
dark early those days.

G. Yeah, Jesus Christ Caps, gets dark at  
4:30 or 5:00.

[98]

P. And they close, what time to they  
close? They close at 6 usually or 7.  
Yeah, so it gonna be around 8, 8

o'clock. Wanted to make sure everybody  
was out of the building.

G. Now, now, I'm gonna ask you another  
question, O.K.?

How many holes did you drill, sir?

P. Too many! (Laughing) God Damn it.

That was well executed plan though,  
wasn't it? I was proud of that.

G. It was.

P. Very well executed...

P. (Inaudible) Even the Bangor Daily News  
said it was a well executed plan.

G. It was professional.

P. Them people knew what they was doing,  
and knew what they wanted.

G. It's it's too bad we couldn't prove  
that we didn't steal no tires that  
night.

P. (Inaudible)

G. Because we didn't steal any tires that night.

\* \* \*

(The following portion of the Transcript was not admitted at Mr. Moulton's trial.)

[8]

P. Yah, he thought something was wrong becuz the door locks were out of it.

G. And we told him we was gonna paint it. That was our answer. Yup. ah. Did you see him in the police office before into It says in here you did.

P. Yunh, I know.

G. And he told you he was in there because of a speeding ticket or something.

P. I never seen him in there. I don't even know what, don't even know what you're talking about seeing him in

there. I figure he put that in there to make it sound good.

G. Yah, I know, O.K., yup the white one, it that came in during the night.

\* \* \*

(The remainder of page 8 and the following portions of the Transcript were admitted at Mr. Moulton's trial as State's Exhibit #28.)

[8]

\* \* \*

P. I have got an idea mother fucker.

P. Thats the only problem, its so touch and go. This is gonna have to be somebody we can trust, and ah, but I don't know of too many people we can trust. Since we're not going to have Linda coming up for Houston.

P. We need somebody, see I want to, I want to turn this thing right around and pin it on Elwell, and David.

G. All of it?

P. Yup? but, the dump truck.

P. The whole fucking dump truck.

G. You notice how I, I, can I say something about that?

P. Sure.

G. I'm sorry to interrupt Caps.

G. They both say, now I read it wrong, cuz Elwell, Gary and David both say that I said I was gonna burn it.

P. Yeah, I know.

P. Now they're after you. I mean Elwell's testimony went right after you.

G. I can't believe it though.

P. All they said about me in the whole fucking thing was that I went down

[9]

town and blew some windows out and shit.

G. Yeah, Okay right here.

G. Blew some windows out and shit, O.K. right here.

G. Yah, you know, even if they ratted on us O.K., well.

P. Yah.

G. They ratted on us, but they didn't have to, they didn't have to tell the God Damn cops that you know, you went out shooting windows out. That's stupid thou, Caps!

P. (Inaudible)

G. What's that got to do with it?

P. I know, but you..... they jewelry store, he threw the jewelry store in.

P. Is there a reason David threw the jewelry store in because when we go to trial...

G. Is it hard for you to talk on the phone?

P. Oh, in the morning it is, well I don't dare to talk too much on the phone.



G. That's what I'm saying tho....

P. Oh, yah.

G. Cuz you know I notice.

P. I try to.

P. I don't want to directly connect myself to anything, just, in case they're listening.

G. Yah.

P. Becuz chances are they're listening becuz they want to build a big case.

G. How are they gonna tap the line outside, is that, can they do that?

[10]

P. Oh, yah.

G. Ayeah, but isn't that against the law? Isn't it against the law?

P. Yeah, it is against the law. They could never use it in court against us, unless they got a court warrant to tap,

ah to tap the lines which they can.

They can get a, a, court approved.

G. Yeah, but we'd have to know about that tho, right?

P. No.

G. No?

P. Mm-mm but I think possibly they could tap our lines with no problems.

G. Especially where it's a private line, then?

P. Yeah.

Also if, if there's arson involved its a federal case. No, it's, it's a federal-----a federal----do hicky.

G. Tell me about it buddy, tell me about it.

P. (Laughing).

G. Look who's name is on that son of a bitch.

- P. Yea, Yeah, but we're going to get around it.
- G. Look, look it says I don't remember exactly what he said, but Gary Colson is running scared.
- I know he said I ought to torch it or something like that.
- P. Who, who suggested that you ought to fucking touch it?
- G. I, I did.
- P. Did Elwell suggest it?

[11]

- G. I did. But Gary thought it was a good idea.
- P. Yeah, O.K.
- G. I said it.
- P. Who, who went over to, who bought the gasoline? Over at Mullen's?
- G. I did.

- P. Oh.
- G. I did.
- P. Did Elwell give you the money?
- G. Nope.
- P. Did he supply the jug or something?
- The jug, where did you get the jug from?
- G. Out of the back of his truck. You wait a minute here, there's something else I wanted to.... You knew the truck was burned, yes, ever exist, assist them in any way? Only thing I done was Gary Colson come up to me while at McDonalds.....blah, blah, blah Take me out to Don Marcias and drop me off, right.
- G. But you get in here a little ways further, have you, did you, have you read this good.
- P. I've read it, yeah.

G. All right everything he never said nothing about burning the truck. When I saw the flames I said, "what the fuck did you do?" The flames were up over the trees, up over the tops of the trees. He never said nothing he was white as a ghost. He just said get me to Don Marcias. (Laughing)  
(Snickering)

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P. He doesn't say you burned the truck though. He can't actually prove you actually burned that truck.

P. You never said you did.

P. You never said you, I burned the truck.

G. Right. There's another part in here. Alright questions. Did you know he was going to burn the truck. Answer, He said he was going to, I didn't know he

would. I didn't think he had the berries.

P. Mm-mm (Laughing)

G. Will you take a polygraph examination as to what you have told us? Yes, I will take it. Gary Elwell and all that bull shit.

P. He takes a polygraph, that fucking thing is going to go beep, because he lies so and he's gone around so much stuff.

G. You know this will, there's one thing here too like he said he turned around when he picked me up and went back up 137 towards Belfast, O.K. thats when he saw the flames start. We never went that way. We went right across in back of Bowens Store across down thru City Point, Head of the Tide and down that way.

- G. We never, Jesus Christ, We never went back up thru there.
- P. He doesn't even remember. He's forgetting alot of the stuff.
- G. He's, he's forgetting.
- P. And when he gets the fucking stand.
- G. Thats what I said tho, he's forgetting.
- P. That's rite, when hes forgetting and when he gets on the fucking stand he's gonna fuck up, cuz, he's gonna have to, he's gonna have to say gee

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he don't know what happened. He gonna have to make up what happened.

- P. (Inaudible)-----and my original idea Gary.
- P. Is we're going to turn this around and make it look like they burnt the truck and stole the truck, but what are we going to do with the fucking witness?

Only witness I can think of that may help hus, but I don't know is Peter Weser.

Peter Weser thinks we're innocent.

- G. Yeah, but there's another thing about that Caps. You ask him to do something like that and he wouldn't, but Weser's such a chicken shit. I think he'd crack under pressure.
- P. You think so?
- G. Yes, sir. I do. It don't take nothing to scare the boy.
- P. Yeah.
- G. You get him up there in front to the D.A. and the D.A. is gonna tear him apart. Perley, you know it.
- P. That's the only one I can think of.
- G. No, its true tho, right?
- P. Well probably I,-----
- G. Well see my point, tho.



- P. I don't know him that well, I know he's, I know he's ah (Inaudible)
- G. He's not a very strong person I'll tell ya.
- P. Well, I's thinking.
- G. He aint like you and I see.
- P. If we can get a witness to say-----he was driving around.

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- We gotta find some one that drives around, goes around McDonalds once in a while.
- G. Mm-mm
- P. That night he see, you and I, Gary Elwell and David walking out of McDonalds around 10:30 and ah we got in our car and Elwell got in his. Elwell and I, Elwell and ah you and I was going across the bridge, he happened to

- be going over to Mullen's ah, this witness, to pick up a beer or something or get some gas and we turned off onto Mill Lane and Elwell went straight to Mullen's and bought a little gallon of gas, thats all he'd have to say.
- G. Yah, but how in the hell are they gonna remember?
- They aint gonna remember 2 years ago?
- Don't even know who the Christ was there (Inaudible)
- P. The reason he's gonna remember is because right after this happened, Beardsley told us to get us some alibis and we and we remember seeing this guy, following us home. So, so you know we talked to him next week. (Inaudible)
- You said I haven't lived in a mobile home for a long time forgot what it felt like to live in a mobile home.
- (Laughing)

G. Tell me about it, rocks you to sleep at nite or frigging wind though, rocks you to sleep. I'm gonna be honest with you, I'm scared about this. You know. You don't have to worry about nothing, don't you know, don't think that I

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don't mean it like that I'm just, I'm just worried that's all. I think I got every fucking right to be, you know.

P. But, we got to turn it around some how Gary.

G. Yah, I know.

P. Because this right here will convict us.

G. Yes, it this will, right here.

P. This will.

G. See the thing is Caps, even how this reads you're still an accessory to it.

P. Oh, yeah.

G. To the arson.

P. I'm an accessory, yeah and we're gonna get convicted on it course we are.

G. No, right, well you know what I'm saying? Tho?

P. Yeah, I'm still involved.

G. Ah - I don't know boy, I tell ya, this is crazy.

\* \* \*

ITEMS OMITTED IN PRINTING

The decision of the Supreme Judicial Court of Maine in State of Maine v. Perley Moulton, Jr., Decision No. 3584, Law Docket No. Wal-83-401 (Decided August 16, 1984), and the opinion and order of the Maine Superior Court (Date of entry: June 20, 1983) have been omitted in printing this appendix because they appear, beginning on the following pages, in the appendix to the printed Petition for a Writ of Certiorari:

Decision of the Maine Supreme Judicial Court. . . .	1
Opinion and Order of the Superior Court. . . . .	43